

TENNECO OIL CO.

IBLA 79-9

Decided June 22, 1979

Appeal from decision of the Acting Director, U.S. Geological Survey, holding in abeyance a request for the return of royalties paid on vented and flared gas as well as gas or oil leaked, spilled, or used on Federal leases on the Outer Continental Shelf.

Affirmed.

1. Administrative Procedure: Administrative Review -- Administrative Procedure: Judicial Review -- Appeals -- Judicial Review -- Oil and Gas Leases: Royalties -- Outer Continental Shelf Lands Act: Oil and Gas Leases -- Rules of Practice: Appeals: Generally

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

APPEARANCES: Stan McLelland, Esq., and Ray H. Berk, Esq., Baker and Botts, Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Tenneco Oil Co. (Tenneco), has appealed from a decision by the Acting Director, U.S. Geological Survey (Survey), EGS 219597, which held in abeyance Tenneco's request for the return of royalties paid on vented and flared gas as well as gas or oil leaked, spilled, or used on Federal leases issued under the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-43 (1976), pending the outcome of litigation concerning the legality of the assessment of such royalties. The Acting Director's decision was set forth in a letter dated September 5, 1978.

The decision noted that the royalties were collected pursuant to a Solicitor's opinion which has been approved by the Secretary. Solicitor's Opinion, 84 I.D. 54 (1976), supplemented, 84 I.D. 64, 84 I.D. 171 (1977). Appellant's arguments are directed against the holding of the Solicitor's opinion itself. However, this Board only has authority to review the Acting Director's decision to determine whether or not it was consistent with the opinion approved by the Secretary. See Kenneth H. Bunch, 37 IBLA 346 (1978); Nola Grace Ptasynsky, 28 IBLA 256 (1976); L. A. Walstrom, Jr., 25 IBLA 186 (1976); Molybdenum Corp. of America, 12 IBLA 339 (1973); see also, Warner Bergman (On Reconsideration), 31 IBLA 21 (1977).

[1] Prior to filing its request with the U.S. Geological Survey which led to this appeal, appellant had also filed a suit for a declaration that it is entitled to the refund of these royalties, Tenneco Oil Co. v. Dept. of Interior, Civ. No. 78-2423, (E.D. La., filed July 24, 1978). Appellant has made no argument concerning the propriety of holding its request in abeyance until the litigation is resolved. In effect, appellant has only asked for relief pending judicial action, but has provided no reason why such relief would be warranted. The Department need not refund disputed royalties or suspend future collection during such litigation. See Eldon Smith, 5 IBLA 330, 343, 79 I.D. 149, 154 (1972). Survey acted properly by holding appellant's request in abeyance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is hereby affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

